

groundless, these present proceedings ought never to have been brought. I am satisfied, therefore, that the proper order as to the respondent's costs is that they be paid in full (as between solicitor and client) by the applicant.

Order accordingly.

**CHANG KAN NAN v. LUDHIANA
TRANSPORT SYNDICATE.**

[Oriv. Civ. Juris. (Abbott, J.) October 25, 1950]

[Seremban — Civil Suit No. 24 of 1949]

Executors (Powers) and Fatal Accidents Enactment — Negligence of bus driver in allowing deceased to ride in driver's compartment — Assessment of damages.

In this case the father of the deceased boy claimed damages and funeral expenses from the defendants on the allegation that the boy's death was brought about by the negligence of one of the defendants' servants. It appeared that the deceased boy was allowed by the bus driver to ride in the driver's compartment and that after a collision between the bus and a private motor car, the boy sustained injuries of which he died. On the evidence it appeared that the collision was caused by the negligence of the driver of the private motor car.

Held, that in this case the driver of the bus was negligent in carrying the deceased in a part of the vehicle where he might be exposed to undue danger and that therefore the defendants were liable for damages.

Cases referred to :—

- (1) *Latham v. R. Johnson & Nephew, Ltd.*
(1913) 1 K.B. at page 413.
- (2) *Benham v. Gambling* (1941) A.C. 157.

ACTION.

S. E. Bell for the plaintiff.

F. J. Woodward for the defendants.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Abbott, J. : — This is a claim founded upon the Executors (Powers) and Fatal Accidents Enactment, Cap. 19 of the Laws of the Federated Malay States. The father of the deceased, who at the time of his death was a fourteen-year-old schoolboy, claims damages and funeral expenses from the defendants on the allegation that the boy's death was brought about by the negligence of one of the defendant's servants.

There has been a conflict of testimony and I will briefly set out the facts as I find them to be.

On the 8th of December, 1948, the deceased with three companions, two of whom gave evidence, left home on the way to school whither they were to proceed

by bus going along an estate road from Ladang Geddes to Bahau. The bus which they boarded was the property of the defendants and, on the day in question, it was being driven by one of their servants. The deceased was a fare-paying passenger in that he had been provided with a season-ticket by his father. At the time that the boys boarded the bus it was full inside and passengers were standing; since there was no room for them within the driver invited them to travel in that part of the bus which constructionally had been set apart for the accommodation of the driver. I have seen a bus, agreed to be similar to the bus in question, and it is sufficient for me to say that the place set apart for the driver was clearly not intended nor suitable for the use of passengers — but it was in that place that the deceased, with his companions, travelled. The bus proceeded on its way at a speed which may have seemed fast, or very fast, to the passengers, but, since there was no conclusive evidence of the speed, I am unable to hold that it was travelling at an excessive speed having regard to all the circumstances. Within a few feet of rounding a bend in the road the bus came into collision with a private motor car which was coming from the opposite direction and, as the photographs show, the two vehicles sustained slight and severe damage respectively. The impact of the collision occasioned to the deceased the injuries of which, shortly afterwards, he died. There was evidence, which I am not prepared to reject, that the driver of the private motor car was driving negligently. I am not, however, satisfied that that driver of the bus was also driving negligently. Consequently, I find as a fact that the collision was occasioned by the act of the driver of the private motor vehicle.

I pause here to observe that, upon the application of the defendants, leave was obtained to join the driver of the private motor car as a third party. The Court was, however, informed that it had not been possible to effect service upon him and that there was no reason to believe that such service would be effected upon him within a measurable distance of time — either because he was evading service or because, less blameworthy, he had quitted the district without leaving information concerning his future movements.

It remains to be decided whether the driver of the bus, in inviting and permitting the deceased to travel where he in fact did, was guilty of the negligence which was the effectual cause of the deceased's death. It is well-settled law that those responsible for conveying fare-paying passengers in public-service vehicles owe a very high degree of care towards those whom they convey. To carry any passenger in or on any part of

the vehicle where he might be exposed to undue danger would certainly show an indifference to the care needed. It is within ordinary knowledge that most accidents between motor vehicles bring about damage to the front part of the vehicles and there can hardly be a more dangerous place in any vehicle than that occupied by the driver. Although in each action arising out of allegations of negligence "the Court must deal with the case upon the facts" (*Clark and Lindsell on Torts*, 10th Edition, page 195) the general principle in cases such as this appears to have been stated by Lord Justice Kennedy in *Latham v. R. Johnson & Nephew, Ltd.*⁽¹⁾. The Lord Justice used the following words:—

".... the person guilty of the original negligence will still be the effective cause if he ought reasonably to have anticipated such interventions and to have foreseen that if they occurred the result would be that his negligence would lead to mischief."

The intervention in this present case was the collision between the two vehicles and the mischief which resulted was the death of the deceased. In the view of this Court the driver of every vehicle ought reasonably to anticipate an accident although it may never occur. In the present case, the driver of the bus could not but have known that, in the event of a collision involving the front of his vehicle, the deceased was standing in a most dangerous place—and standing there at his (the driver's) invitation and on his authority. It may be that, in doing what he did, the driver was actuated by kindness of heart in seeking to prevent this ill-fated boy from being late for school; but I must hold that the driver's negligence has been established as being the effective cause of the boy's death.

I approached the difficult task of the assessment of damages in the light of the decision given in *Benham v. Gambling*⁽²⁾. I accept the evidence that the deceased was a normal, healthy and intelligent boy and I am satisfied that his circumstances of life were calculated to lead on balance to a positive measure of happiness of which, by his death, he has been deprived. I assess the damages at \$2,500.

Although the plaintiff's claim for funeral expenses was not supported by receipts, I consider the amount claimed to be reasonable and the plaintiff is entitled to recover them.

I give judgment, therefore, for the plaintiff in the sum of \$2,662.60, with costs—to be taxed.

Judgment for the plaintiff.

**In re SETHURAMASWAMY CHETTIAR,
DECEASED;
R. M. THIRUPPATHI CHETTIAR AND ANOR.
v. LETCHUMANAN CHETTIAR AND ORS.**

[Orig. Civ. Juris. (Thomson, J.) October 11, 1950]

[Ipoh—Originating Motion No. 10 of 1950]

Probate and Administration Enactment—Ex parte order for sale—Beneficiaries having contingent interests—Service on—Japanese Judgments and Civil Proceedings Ordinance, 1946—Application to set aside Japanese decree—Duress or coercion—Relief in what circumstances—Debtor and Creditor (Occupation Period) Ordinance, 1948—Value of land at various stages of the occupation—Agents and Trustees (Occupation Period) Ordinance, 1949—Protection of trustees and bona fide purchasers.

The testator by his will gave the whole of his Malayan property to his executor absolutely but subject to payment of Rs. 10,000 to his two widows upon each of them adopting a son. The executor, who was in India at all material times, appointed an attorney to take out letters of administration and further authorised him to sell any property belonging to the testator's estate as the attorney may consider proper.

The attorney obtained an order for grant of letters of administration on the 30th June, 1941, but paid the estate duty in occupation currency on the 3rd December, 1943, and extracted grant from the Japanese Court on the 2nd June, 1944.

On an *ex parte* application by the administrator for the purpose of "liquidating expenses incurred" including payments to the Indian Independence League, the Japanese Court gave him permission on the 9th December, 1944, to sell various pieces of land. The administrator sold sixteen pieces of land to twenty-five of the respondents or their predecessors in title.

The executor died in India on the 28th November, 1945. An application by the administrator for the substitution of the Japanese grant under section 5 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, was rejected on the ground that on the death of the executor the authority of the administrator came to an end.

The applicants then obtained grant of letters of administration *de bonis non* as attorneys of the widows of the testator and made this application under section 3 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, to set aside the order for sale obtained by the previous administrator on the grounds that it was (i) obtained under duress, (ii) obtained *ex parte*, and (iii) detrimental to the estate; and to set aside the sales to the respondents.

Held, that a person with a possible future claim is not a proper party to a litigation in respect of the administration of a testator's or intestate's estate and as there was no evidence that the contingencies upon which the widows' interests depended had occurred, the widows could not be made parties.

Held further, that as the application was made by the attorney of the executor empowered to sell, no question of serving the executor arises.

Quaere: whether failure to serve beneficiaries is a procedural defect which rendered the order voidable and not void *ab initio*, and whether such order can be set aside to the prejudice of innocent third parties who had altered their position on the strength of the order.